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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-830]

Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Nucor Corporation (Nucor), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether certain imports of carbon and certain alloy steel wire rod from Mexico with actual diameters that are less than 4.75 millimeters (mm) produced and/or exported to the United States by Deacero S.A.P.I. de C.V. (Deacero) is circumventing the antidumping duty (AD) order on carbon and certain alloy steel wire rod from Mexico.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska or Eric B. Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8362 and (202) 482-6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2017, Nucor, a domestic interested party, requested that Commerce initiate an anti-circumvention inquiry with regard to carbon and certain alloy steel wire rod from Mexico with actual diameters that are less than 4.75 mm (hereinafter referred to as narrow-gauge

wire rod) that are produced and/or exported to the United States by Deacero.¹ Nucor alleges that such narrow-gauge wire rod constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico pursuant to 781(c) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(i) and, thus, falls within the scope of the *Order*.² In its November 30, 2017, submission, Deacero opposed Nucor's request for an initiation of an anti-circumvention proceeding.³ On December 6, 2017, Nucor submitted a surrebuttal to Deacero's Rebuttal Comments.⁴ On December 13, 2017, Commerce determined that it required additional time beyond the regulatory 45-day time limit to initiate a circumvention inquiry and, therefore, Commerce extended the time-period for issuing the initiation decision until January 29, 2018.⁵ On December 15, 2017, Commerce officials discussed via telephone Nucor's request that the Department initiate a minor alteration anti-circumvention inquiry on wire rod produced and/or exported by Deacero regardless of minimum diameter. During the conversation, counsel indicated that Nucor would consider supplementing its allegation with a discussion of how wire rod with diameters that are less than 4.4 mm constitute circumvention via minor alteration.⁶ On January 23, 2018, Nucor submitted supplemental information regarding the Circumvention Allegation.⁷ Also, on January 23, 2018, Commerce uniformly tolled all Enforcement and Compliance deadlines to account for the three-

¹ See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Request for Circumvention Ruling," dated October 27, 2017 (Circumvention Allegation). The request was not filed in its entirety until after close of business on October 27, 2017. Thus, the date of acceptance of this request was October 30, 2017.

² See *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Order*).

³ See Deacero's Letter, "Carbon and Certain Wire Rod from Mexico – Opposition to Circumvention Inquiry," dated November 30, 2017 (Deacero's Rebuttal Comments).

⁴ See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Response to Deacero's Opposition to Circumvention Inquiry," dated December 6, 2017 (Nucor's Surrebuttal Comments).

⁵ See Memorandum to the File, "Extension of Time to Determine Whether to Initiate," dated December 13, 2017.

⁶ See Memorandum to the File, "Telephone Discussion with Counsel to Nucor Corporation (Nucor)," dated December 18, 2017.

⁷ See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Supplemental Information for Anti-Circumvention Ruling Request," dated January 23, 2018 (Supplemental Circumvention Allegation).

day closure of the Federal Government that occurred from January 20 through January 22, 2018.⁸

As a result, the deadline for Commerce to determine whether to initiate on Nucor's circumvention allegation was extended to January 31, 2018. On January 30, 2018, Deacero objected to Nucor's request for Commerce to include wire rod produced and/or exported by Deacero with actual diameters less than 4.4 mm in the parameters of its circumvention inquiry and requested that Commerce exercise its discretion to extend the deadline to determine whether to initiate a circumvention inquiry to afford interested parties sufficient time to file comments regarding Nucor's allegations of circumvention.⁹

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire

⁸ See Memorandum to the File, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018.

⁹ See Deacero's Letter, "Carbon and Certain Wire Rod from Mexico - Request Regarding Nucor's Request for Anti-Circumvention Inquiry," dated January 30, 2018.

cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as “tire cord quality” or “tire bead quality” indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products within the scope of this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Prior Anti-Circumvention Determination

On September 24, 2012, Commerce issued an affirmative final circumvention determination in which it determined that, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), wire rod with an actual diameter of 4.75 mm to 5.0 mm produced and/or exported by Deacero constituted a circumventing minor alteration of the *Order* and, as such, was covered by

the scope of the *Order*.¹⁰ Commerce's finding was subsequently affirmed by the Court of Appeals for the Federal Circuit.¹¹

Initiation of Minor Alteration Anti-Circumvention Proceeding

Section 781(c) of the Act provides that Commerce may find circumvention of an AD order when products which are of the class or kind of merchandise subject to an AD order have been "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification." Section 781(c)(2) of the Act provides an exception that "{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the AD order."

While the statute is silent as to what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon "such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products."¹² Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: 1) overall physical characteristics; 2)

¹⁰ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 59892 (October 1, 2012) (*4.75 Wire Rod from Mexico*) and accompanying Issues and Decision Memorandum (IDM) at 18.

¹¹ See *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016) (*Deacero*).

¹² See S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) ("In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.").

expectations of ultimate users; 3) use of merchandise; 4) channels of marketing; and 5) cost of any modification relative to the value of the imported products.¹³

Analysis

After analyzing the information in the Circumvention Allegation and Supplemental Circumvention Allegation, we determine that Nucor has satisfied the criteria listed above to warrant an initiation of a formal anti-circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), to determine whether wire rod with actual diameters that are less than 4.75 mm produced and/or exported to the United States by Deacero constitutes merchandise altered in form or appearance in such minor respects that should be included within the scope of the *Order*. For a summary of the proprietary comments received from interested parties and further discussion of Commerce's basis for initiating this minor alteration inquiry, see the Initiation Decision Memorandum, dated concurrently with this notice and hereby adopted by this notice.¹⁴ The Initiation Decision Memorandum is a business proprietary document, of which a public version is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. The signed Initiation Decision Memorandum and the electronic version of the Initiation Decision Memorandum are identical in content.

¹³ See, e.g., *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China*, 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from China Preliminary Scope Ruling*), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 74 FR 40565 (August 12, 2009) (*CTL Plate from China Final Scope Ruling*); see also *4.75 mm Wire Rod from Mexico* IDM at Comment 1; see also *Deacero*, 817 F.3d at 1337.

¹⁴ See Memorandum, "Initiation of Minor Alteration Circumvention Inquiry on Wire Rod With Actual Diameters That Are Less Than 4.75 Millimeters," dated concurrently with this notice (Initiation Decision Memorandum).

Merchandise Subject to the Anti-Circumvention Inquiry

This minor alternation anti-circumvention inquiry covers wire rod with actual diameters that are less than 4.75 mm produced and/or exported to the United States by Deacero.

Commerce will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

Following consultation with interested parties, Commerce will establish a schedule for questionnaires and comments on the issues related to the *Order*. In accordance with section 781(f) of the Act, Commerce intends to issue its final determinations within 300 days of the date of publication of this initiation.

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: January 31, 2018.

Christian Marsh,
Deputy Assistant Secretary
for Enforcement and Compliance.

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